Supreme Court, U.S.
FILED

No. 03 676 NOV 3 2003

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

Thomas-Robert: Peterson Petitioner

vs.

Detroit: the city Respondents

ON PETITION OF WRIT OF CERTIORARI TO :
UNITED STATES COURT OF APPEALS
THE SIXTH CIRCUIT

APPENDIX

Thomas-Robert: Peterson

(15926-Beaverland)

Detroit, Michigan (48223)

(313)-531-3206

33 pp

LIST OF APPENDIX:

1 The circuit-court-order dismissing the appeal, filed: Aug.-05-2003 : APX : exhibit :---------- A

2 The district-court-order dismissing the complaint and denying motion for reconsideration, and to amend. dated January-23-2003 : APX : exhibit :----------B

3 The district-court-order denying Plaintiffs motions to amend and ordering Plaintiff to show-cause. dated December-18-2002 : APX : exhibit :----------C

4. The district court docket APX : exhibit:---------- D

5 the Complaint : APX : exhibit :----------E

BEST AVAILABLE COPY

No. 03-1122
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

THOMAS ROBERT PETERSON	)	
Plaintiff-Appellant	)	
v.	)	ORDER
CITY OF DETROIT	)	
Defendant-Appellee	)	

Before: DAUGHTREY and MOORE, Circuit Judges; CALDWELL, District Judge*.[1]

Thomas Robert Peterson, proceeding pro se, appeals a district court judgement dismissing his civil action filed pursuant to the Privacy Act, 5U.S.C.s-552a. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed.R.App.P.34(a).

On August 12,2002, Peterson filed a complaint against the City of Detroit. Peterson alleged that he applied for a taxicab license , and that his application was denied because he refused to disclose his social security number violated the Privacy Act.

Peterson subsequently filed three motions to amend his complaint. On December 18, 2002. the district court denied Peterson's first two motions to amend. On January 23, 2003, the district court denied Peterson's third motion to amend and dismissed Peterson's complaint. Peterson has filed a timely appeal.

[1] The Honorable Karen Caldwell, United States District Judge for the Eastern District of Kentucky, sitting by designation.

We review de novo the district court's dismissal pursuant to Fed. R. Civ.p.12(b)(6). James v Meow Media Inc., 300 F3d 683, 689 (6th Cir.2002) cert.denied, 123 S.Ct. 967 (2003); Columbia Natural Res.,Inc. v Tatum, 58 F3d 11901, 1109 (6th Cir. 1995) When considering a Fed. R. Civ. P. 12(b)(6) motion to dismiss, "[t]he district court must construe the complaint in a light most favorable to the plaintiff, accept all the factual allegations as true, and determine whether the plaintiff undoubtedly can prove no set of facts in support of his claims that would entitle him to relief." Tatum, 58 F,3dat 1109, accord James, 300 F.3d at 689.

Peterson's complaint alleged a violation of s-7(a)(1) of the Privacy Act. See McKay v. Thompson, 226 F3d 752. 755, (6th Cir 2000). Section 7(a)(1) prohibits" any Federal, State or local government agency [from denying] to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number." However, a subsequent amendment to the Social Security Act permits states to require disclosure of social security numbers in the administration of its driver's license law. 42U.S.C.s-405(c)(2)(C)(i). Thus s-7 insofar as it relates to the "privilege" at issue in this case, has been superceded by a subsequent amendment to the Social Security Act. 42U.S.C.s-405(c)(2)(C)(v) (stating that "[i]f and to the extent that any provision of Federal law heretofore enacted is inconsistent with the policy set forth in clause(i), such provision shall, on and after October 4 1976 be null, void, and of no effect"). We therefore conclude that the district court properly dismissed Peterson's complaint, because it fails to state a claim upon which relief may be granted.

[NOTE the circuit-court page-2 is CONTINUED: next page]

We further conclude that the district court properly denied Peterson's motions to amend his complaint. Generally, a districts court's decision to deny a plaintiff's motion to amend his complaint is reviewed under an abuse of discretion standard. Crawford v. Roane 53 F3d 750, 753(6th Cir. 1995). However, when a district court's decision to deny a plaintiff's motion to amend is based upon a "legal conclusion that the amended pleading would not withstand a motion to dismiss," this court reviews that decision de novo. Fisher v Roberts, 125 F3d 974,977(6thCir.1997) (Quoting LRL Properties v Potage Metro Hous.Auth., 55F3d 1097,1104(6thCir. 1995)).

In his first and third motions to amend his complaint. Peterson sought to add additional claims, based upon the same facts,,under 42U.S.C.s-1983 and s-7(b) of the Privacy Act. Peterson's purported s-1983 claim was based upon his contention that the City violated s-7(a)(1) of the Privacy Act. As indicated above, however, s-7(a)(1) has been superceded by s-405(c)(2)(C)(i). Furthermore, like s-7(a) of the Privacy Act, the validity of s-7(b) is questionable after the enactment of s-405(c)(2)(C)(i) and(v). Hence, the district court properly concluded that any amendment to Peterson's complaint to assert a s-1983 of s-7(b) claim would be futile and could not survive a motion to dismiss.

Peterson has waived appellate review of the district court's denial of his second motion to amend his complaint because his appellate brief does not contain any argument as to why the district court's denial of such motion was improper. See Buziashvili v Inman, 106 F3d 709,719 (6Cir.1997) ; Boyd v Ford motor Co., 948 F2d283,284 (6th Cir. 1991)

Accordingly, the district court's judgement is affirmed. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

_____

Clerk

[DATED: FILED AUG O5 2003]
[BY THE LEONARD GREEN, Clerk]

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THOMAS ROBERT PETERSON.
Plaintiff

case No. 02-CV-73279-DT

V
CITY OF DETROIT
Defendant

---/

ORDER DENYING MOTION TO AMEND
AND
DENYING MOTION FOR RECONSIDERATION
AND
DISMISSING COMPLAINT

On December 18, 2002, the court issued an order directing Plaintiff to show cause, in writing, why his case should not be dismissed for lack of subject matter jurisdiction. Since the December order, Plaintiff has filed three documents: a "Response to the Courts Show-Cause," filed on January 2, 2003; a Statement and Claim of Special-Damage(s)," filed on January 13, 2003; and a "Motion (request) for a Reconsideration," filed January 13, 2003. Although these documents, filed *pro-se*, are nearly indecipherable, the court liberally construes them to be the following: a response to the court's December 18 show cause order; a motion to amend the complaint to include a claim under section 7(b) of the Privacy Act of 1974; and a motion for reconsideration of the court's December 18 order denying Plaintiff's motion to amend his complaint to include a claim

under 42 U.S.C. s-1983. These motions will be addressed, in turn, below.

I. RESPONSE TO THE COURT'S SHOW CAUSE ORDER

In it's December 18 order, the court found that the 1976 amendment to the Social Security Act 42 U.S.C.s-405(c)(2)(C)(i), partially repealed s-7 of the Privacy Act and that a s-7 claim based upon the denial of a driver's license "lacks an arguable basis in law." *Duncan v Cone,* No. 00-5705, 2000 WL 1828089, *1 (6th Cir, Dec 7, 2000). Accordingly, since Plaintiff was bringing a suit under s-7(a) of the Privacy Act, the court ordered Plaintiff to show cause why his case should not be dismissed for lack of subject matter jurisdiction, In his response to the show cause order, Plaintiff appears to make two arguments: (1) that 42 U.S.C.s-405(c)(2)(C)(i) does not apply because Defendant cannot identify a legal grant of authority for the requirement that an applicant for a taxi license provide his social security number for the license application; and(2) Plaintiff should be permitted to amend his complaint to include a claim for violation of s-7(b) of the Privacy Act of 1974.

A. 42 U.S.C. S-405(c)(2)(C)(i)

As to Plaintiff's first argument, the court finds that Defendant has sufficiently identified the law that gives them authority to utilize social security numbers in the city's administration of taxi licenses. Thus, 42 U.S.C. s-

405(c)(2)(C)(i) applies to the instant matter, and Plaintiff's claim under s-7(a) will be dismissed.

Section 405(c)(2)(C)(i) provides:

> It is the policy of the United States that any State (or political subdivision thereof) may, in the administration of any tax, general public assistance, driver's license, or motor vehicle registration law within its jurisdiction, utilize the social security account numbers issued by the Commissioner of Social Security for the purpose of establishing the identification of individuals affected by such law, and may require any individual who is or appears to be so affected to furnish to such State (or political subdivision thereof) or any agency thereof having administrative responsibility for the law involved, the social security account number (or numbers, if he has more than one such number) issued to him by the Commissioner of Social Security.

42 U.S.C. s-405(c)(2)(C)(i) . Section 58-1-1, et seq,. of the Detroit City Code of 1984, is a comprehensive regulatory scheme of vehicles for hire, such as taxicabs, within the City of Detroit. The Code provides operation and licensing requirements. including a requirement that drivers be subject to periodic record checks by the police department for criminal convictions. In order to complete efficient and accurate record checks, the city uses the social security numbers of drivers. According to 42 U.S.C. s-405(c)(2)(C)(i) the city's practice of utilizing social security numbers " in the administration of any driver's license, or motor vehicle registration law" is permissible. Thus, Plaintiff has not persuaded the court that s-405(c)(2)(C)(i) is inapplicable to the instant case.

Accordingly, Plaintiff cannot maintain a claim under s-7(a) of the Privacy Act.

B. Section 7(b) of the Privacy Act of 1974

In his response to the court's show cause order, Plaintiff appears to be requesting that he be aloud to amend his complaint to include a claim under s-7(b) of the Privacy Act of 1974.[1] Section 7(b) states, "any Federal, State, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such disclosure is solicited, and what uses will be made of it." Plaintiff's motion to amend., however , will be denied because it is futile.

Federal Rule of Civil Procedure 15 governs amendments to pleadings. Rule 15 provides that, after an answer has been filed, " a party may amend the party's pleading only by leave of the court or by written consent of the adverse party; and leave shall
be freely given when justice so requires " The thrust of this provision" is to reinforce the principle that cases should be

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[1] Plaintiff's response states, "NOTICE: All-Rights-Reserved for the addition of section-7(b) to the complaint of for the asking of the court of the special-damages in the matter of the section-7(b) against the defendant." (Pl.'s 01/02/03 Resp.) On January 13, 2003, Plaintiff submitted a "Statement and Claim of the Special-Damage(s)," which the court construes as a motion to amend the complaint to include a claim against Defendant for violation of s-7(b) of the Privacy Act of 1974. Thus, both Plaintiff's response to the show cause order and his motion for an amendment will be addressed in this section of the order.

tried on their merits rather than on the technicalities of pleadings." *Tefft v. Seward,* 689 F 2d 637, 639 (6th Cir,. 1982).

"In the decision whether to permit an amendment, some of the factors which may be considered by the trial court are undue 'delay in filing, lack of notice to the opposing party, bad faith by the moving party, repeated failure to cure deficiencies by previous amendments, undue prejudice to the opposing party, and futility of amendment.'" General Elec. Co v. Sargent & lundy, 916 F.2d 1119, 1130 (6th Cir 1990) (citing Hageman v. Signal L.P. Gas Inc. 486 F.2d 479, 484 (6th Cir 1973)); see also Siedlik v. Stanley Works, Inc,. 205 F Supp. 2d 762, 763-64 (E.D. Mich.. 2002) ("[W]hear the proposed amendments would provide futile, leave to amend should be denied."). " Futility of amendment may be based on the proposed pleadings if defendants can show that plaintiffs are incapable of surviving a motion to dismiss." Siedlik, 205 F.Supp.2d at 763.

In this case, the court finds that Plaintiff's proposed amendment, which would add a claim under s-7(b) of the Privacy Act, would be futile because such an amendment could not survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). "Although the protection afforded by the Privacy Act is broad, its civil remedy provision is far less expansive."
Dittman v. State of Claifornia, 191 F 3d 1020, 1026 99th Cir. 1999). The private right of civil action created by the Privacy

Act " is specifically limited to actions against agencies of the United States Government. the civil remedy provisions of the statute do not apply against private individuals, state agencies, private entities, or state and local officials." Unt v. Aerospace Corp., 765 F.2d 1440, 1447 (9th Cir.1985); *see also Polchowski v Gorris*, 714 F. 2d 749, 752 (7th Cir 1983) (same); Cardamone v. Cohen 241 F 3ard 520, 24 (6th Cir. 2001) (finding that the Privacy Act borrows the definition of "agency" from the Freedom of Information Act, which defines "agency" as a federal agency); 5 U.S.C. s-552a(g)(1) (providing a civil remedy for an individual when any "agency" violates a provision of the Privacy Act in such a way as to have an adverse effect on the individual).
Thus, considering no private remedy against state agencies exists under the Privacy Act, Plaintiff's proposed amendment could not withstand a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). See Sinlay v. Lamson & Sessions Co., 948 F. 2d 1037, 1041 (6thCir. 1991) motion to amend should be denied when claim would not survive a motion to dismiss). Accordingly, Plaintiff has not persuaded the court that dismissal of his complaint is unwarranted. For the same reasons, Plaintiff's motion to amend will be denied.

II. MOTION FOR RECONSIDERATION

Finally, Plaintiff requests that the court reconsider its December 18, 2002 order denying Plaintiff's motion to amend his complaint to include a claim under 42 U.S.C. s-1983. Rule 7.1(g) of the Local Rules for the Eastern District of Michigan provides that a motion for reconsideration shall be granted only if the movant can (1) "demonstrate a palpable defect by which the court and the parties have been misled" and (2) show that "correction the defect will result in a different disposition of the case." E.D. Mich. LR 7.1(g)(3). A "palpable defect" is a defect which is obvious, clear. unmistakable. manifest or plain. Mktg. Displays, Inc. v Traffix Devices, Inc., 971 F. Supp. 262, 278 (E.D. Mich. 1997) (citing Webster's New World Dictionary 974 (3ard ed. 1988)). A motion for reconsideration which presents the same issues already ruled upon by the court, either expressly or by reasonable implication, will not be granted. E.D. Mich. LR 7.1(g)(3); Czajkowski v. Tindall & Assocs,. P.C. 967 F. Supp. 951, 952 (E.D. Mich. 1997).

Inasmuch as Plaintiff has failed to demonstrate a palpable defect upon which the court was misled, and simply presents the same issues already ruled upon by the court, his motion for reconsideration will be denied.

III. CONCLUSION

IT IS ORDERED that Plaintiff's motion to amend his complaint [Dkt. # 32] is DENIED.

IT IS FURTHER ORDERED that Plaintiff's motion for reconsideration [Dkt. #31] is DENIED.

Finally, after considering Plaintiff's response to the court's December 18, 2002 "Order... Directing Plaintiff to Show Cause," the court finds that dismissal of the complaint is appropriate. Accordingly, IT IS ORDERED that this case be DISMISSED.

ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

date: January 23, 2003

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THOMAS ROBERT PETERSON.
Plaintiff
V
CITY OF DETROIT
Defendant
/

ORDER DENYING PLAINTIFF'S MOTIONS TO AMEND AND DIRECTING PLAINTIFF TO SHOW CAUSE

Pending before the court are Plaintiff's *pro se* motions to amend, seeking leave to amend his complaint to include a claim under 42 U.S.C. s-1983 and a claim based on a theory of negligence.[1] Defendant responded to Plaintiff's motions on November 8, 2002, requesting that Plaintiff's motions to amend be denied as futile. For the reasons set forth below, Plaintiff's motions to amend will be denied. Further, Plaintiff will be ordered to show cause why this case should not be dismissed for lack of subject matter jurisdiction.

I. BACKGROUND

Plaintiff Thomas Peterson filed a complaint against Defendant City of Detroit ("Detroit") on August 12 2002.

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[1] Plaintiff's first motion to amend was filed on September 27, 2002, and is entitled "MOTION: for an AMENDMENT o JOINDER rule-15(a) and 18(b)." Plaintiffs second motion to amend was filed on October 7, 2002, and is entitled "MOTION for the SUPPLEMENTAL-PLEADINGS."

Plaintiff's complaint alleges that Defendant violated the Privacy Act of 1974, 5 U.S.C. s-552a ("Privacy Act"), when the Detroit Police Department requested that Plaintiff provide his social security number on his application for a taxi-cab-license. (see Def.'s Ex. B.) Plaintiff claims he was denied a taxicab license because he refused to provide his social security number on his application. Plaintiff contends that the Privacy Act prohibits the city from requiring that an applicant provide his social security number to obtain a taxicab license. Plaintiff's instant motions request leave to amend the complaint to include a claim under 42 U.S.C. s-1983 and a negligence claim.

II. STANDARD

Federal Rule of Civil Procedure 15 governs amendments to pleadings. Rule 15 provides that, after an answer has been filed, " a party may amend the party's pleading only by leave of the court or by written consent of the adverse party; and leave shall be freely given when justice so requires." The thrust of this provision "is to reinforce the principle that cases should be tried on their merits rather than on the technicalities of pleadings." *Tefft v. Seward,* 689 F 2d 637, 639 (6th Cir,. 1982).

"In the decision whether to permit an amendment, some of the factors which may be considered by the trial court are undue 'delay in filing, lack of notice to the opposing party, bad faith by the moving party, repeated failure to cure deficiencies by

previous amendments, undue prejudice to the opposing party, and futility of amendment.'" General Elec. Co v. Sargent & lundy, 916 F.2d 1119, 1130 (6th Cir 1990) (citing Hageman v. Signal L.P. Gas Inc. 486 F.2d 479, 484 (6th Cir 1973)); see also Siedlik v. Stanley Works, Inc,. 205 F Supp. 2d 762, 763-64 (E.D. Mich.. 2002) ("[W]hear the proposed amendments would provide futile, leave to amend should be denied."). " Futility of amendment may be based on the proposed pleadings if defendants can show that plaintiffs are incapable of surviving a motion to dismiss." Siedlik, 205 F.Supp.2d at 763.

III. DISCUSSION

A. 42 U.S.C. s-1983

Defendant contends that allowing Plaintiff to amend his complaint to include a claim under 42 U.S.C. s-1983 would be futile because the Privacy Act does not create an individual right which can be remedied under s-1983. Defendants argue that Plaintiff's s-1983 claim should not be added to the complaint because it "could not withstand a Fed. R. Civ. P. 12(b)(6) motion." Sinlay v. Lamson & Sessions Co., 948 F.2d 1037, 1041 (6th Cir. 1991). Thus, Plaintiff should not be permitted to add a s-1983 claim unless the Privacy Act of 1974 creates an individual right enforceable through a private lawsuit.

"Section 1983 imposes liability on anyone who, under the color of state law., deprives a person 'of any rights, privileges, or immunities secured by the Constitution and laws, [including] ...certain rights conferred by federal statutes.' " Blessing v Freestone, 520 U.S. 329, 340 (1997). "in order to seek redress through s-1983, however, a plaintiff must assert the violation of a federal *right*, not merely a violation of federal law." Id. (emphasis in original) (citing *Golden State Transit Courp. v. Los Angeles, 493 U.S. 103, 106* (1989)). Deciding whether a personal right exists under s-1983 "require[s] a determination as to whether or not Congress intended to confer individual rights upon a class of beneficiaries." *Gonzaga Univ. v Doe --U.S.--, 122 S.Ct. 2268, 2276* (2002). " The question is not simply who would benefit from the Act, but whether Congress intend to confer federal rights upon those beneficiaries." *California v Sierra club* 451 U.S. 287, 294 (1981).

Inasmuch as Plaintiff cannot show that the Privacy Act creates an individual right remediable by s-1983, Plaintiff will not be permitted to amend his complaint to include such a claim. The sole claim asserted in Plaintiff's complaint was a violation of s-7(a)(1) of the Privacy Act, Pub. L. No. 93-579
(codified at 5 U.S.C. s-552a note). Section 7(a)(1) provisos, "It shall be unlawful for any Federal State or Local government agency to

deny to any individual any right, benefit or privilege provided by law because of such individual's refusal to disclose his social security account number."

Plaintiff, however, cannot bring an action against Defendant Detroit under this provision because it has been repealed in part. "The Privacy Act has been repealed to the extent that it conflicts with a newer federal law which now permits a state to use social security numbers in the administration of its driver license law and to require individuals to furnish their social security numbers for that purpose. " Duncan v Cone, No. 00-5705, 2000 WL 1828089, *1 (6th Cir. Dec. 7. 2000) (citing 42 U.S.C., s-405(c)(2)(C)(i) and (v) as the "new law" that replaced portions of the Privacy Act). The relevant provision of the Social Security Act, 42 U.S.C. s-405(c)(2)(C)(i), provides as follows:

> It is the policy of the United States that any State (or political subdivision thereof) may, in the administration of any tax, general public assistance, *driver's license*, or motor vehicle registration law within its jurisdiction, utilize the social security account numbers issued by the Commissioner of Social Security for the purpose of establishing the identification of individuals affected by such law, and *may require any individual who is or appears to be so affected to furnish to such State (or political subdivision thereof) or any agency thereof having administrative responsibility for the law involved, the social security account number* (or numbers, if he has more than one such number) issued to him by the Commissioner of Social Security.

42 U.S.C. s-405(c)(2)(C)(i) (emphasis added)

As the Sixth Circuit recognized in Duncan, the 1976 amendment to the Social Security Act has partially repealed s-7 of the Privacy Act, and a s-7 Claim based upon the denial of a driver's license "lack[s] an arguable basis in law." Duncan, 2000 WL 1828089, *1; *see also Stoianoff v Commissioner of the De't. of Motor Vehicles*, No. 00-9090, 2001 WL 568129, *1 ("Assuming arguendo the existence of a private right of action under the Privacy Act,...[Plaintiff's] Privacy Act claim fails nonetheless because the Social Security Act expressly authorizes states to require the disclosure of social security numbers in the administration of driver's license programs...."). In fact, Congress provided, "if and to the extent that any provision of Federal law heretofore enacted is inconsistent with the policy set forth in [42 U.S.C. s-405(c)(2)(C)(i), such provision shall, on and after October 4, 1976, be null, void, and of no effect." 42 U.S.C. s-405(C)(2)(C)(v).[1]

As discussed above, Plaintiff does not have a federal right underwhich he can seek redress based upon-7 of the Privacy

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[1] At least one court has concluded that s-7 of the Privacy Act was never even codified. *see Stoianoff v Commissioner. of Motor Vehicles,* 107 F. Supp. 2d 439, 422 (S.D.N.Y. 2000) (holding that s-7 was never codified and remains in the statute only as a historical note). Indeed, it appears that s-7 of the Privacy Act was palled as a public law, but was designated as a note for purposes of the United States Code. in any event , the courts holding that s-7 has been in relevant part applies regardless of whether s-7 is an actionable statute.

Act. In as much as any proposed S-1983 claim would be based upon a repealed statute, Plaintiff will not be permitted to add such a claim to his complaint. Further, the court finds that the claim asserted in Plaintiff's complaint, the s-7 claim, fails to state a claim upon which relief can be granted because that section has been repealed in relevant part. Thus, the court will order Plaintiff to show cause why his case should not be dismissed for lack of subject matter jurisdiction.

B. Negligence

Plaintiff also made a motion to amend his complaint to add a negligence claim. Again, Defendant argues that the addition of this claim would be futile because Defendant is entitled to immunity from this state law tort claim. First, the court notes that even if Plaintiff were permitted to amend his complaint to add a negligence claim, his case would be dismissed for lack of subject matter jurisdiction because, as discussed above, Plaintiff does not appear to have a sustainable federal law claim and Plaintiff has not shown that diversity jurisdiction exists. Further, the court will deny Plaintiff's motion to amend because such a claim could not withstand a motion to dismiss. *see Siedlik,* 205 F Supp. 2d at 763.

In general, government agencies are immune from state law tort claims, such a negligence claims, in Michigan. Michigan Compiled Laws 691.1407 ("1407") states, "Except as otherwise

provided in this act, a governmental agency is immune form tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function"[1]

First, the court must determine if the city of Detroit is a governmental agency as defined under the immunity statute. For purposes of s-1407, "governmental agency" means "the state or a political subdivision" Mich. Comp. Laws s-691.1401(d). The definition of a "political subdivision" includes a municipal corporation, which is defined as " a city, village, or township or a combination of 2 or more of these when acting jointly." Mich. Comp. Laws s-691,1407.

Next, the court must determine if the Defendant was "engaged in the exercise or discharge of a governmental function," when it processed Plaintiff's application for a taxi-license. A "governmental function" is an "activity that is expressly or implied mandated or authorized by constitution, statute, local charter or ordinance, or other law. Mich. Comp. Laws s- 691.1401(f) Defendant Detroit, as a city in Michigan is

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[1] A plaintiff can overcome a claim of governmental immunity if is shows that the alleged tort falls within one of the statutory exceptions. see Mac v. City of Detroit, 649 N.W.2d 47 (MICH. 2002). Plaintiff has not alleged facts sufficient to show that any statutory exception applies. see Mich. Comp Laws s-691.1402 (exemption for defective highway), 691.1405 (negligent operation of a government-owned vehicle), 691.1406 (defective public building), 691.1407(4) (operation of hospital), and 691.1413 (proprietary function)

authorized to regulate its streets, alleys, and public ways. *see* Mich. Comp Laws s-117.4h . Defendant may also regulate trades and occupations within its boundaries. see Mich. Comp Laws-117.4i. Thus Defendant was engaged in the exercise of a governmental function because it was authorized, at least impliedly, to process taxi licenses under state law. see Lorrane Cab Co v City of Detroit, 98 Nw 2d 607 (1959) (holding that Detroit's taxicab ordinance was valid and not superceded by he state's Motor Carrier Act).

IV. CONCLUSION

IT IS ORDERED that Plaintiff's motions to amend [Dkt. ## 10, 12] are DENIED

Plaintiff IS ORDERS TO SHOW CAUSE, in writing, **no later than January 6. 2003,** why his case should not be dismissed for lack of subject matter jurisdiction.

ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Date: December 18, 2002

----- CIVIL DOCKET ----- as of 1-28-03 10:46am
------ DISTRICT COURT ----- Closed Appeal
Proceedings include all events. [of the district-court]
2 : 02cv73279 Peterson v. Det City

8 /12 /02 -- 1 -- COMPLAINT; jury demand Receipt # 200442546 --Date fee Received: 8 / 12 / 02 with attachment A (dh) [entry date 8 / 13 / 02

8 /14/02 -- 2 -- Summons returned executed by process service on 8/12/02- answer due 9/1/02 for Det (dh) [entry date 9/3/02]

8 /30/02 -- 3 -- Answer by defendant Det City to complaint]1-1] with proof of service (dh) [entry date 9/3/02]

8 /30/02 -- 3 -- Affirmative defenses by defendant Det City (dh) [entry date 9/3/02]

9 /5/02 -- 4 -- NOTICE of Rule 16 and Rule 26(f) scheduling consultation (DT) [entry date 9/6/02]

9 /6/02 -- 5 -- ANSWER by plaintiff Thomas Robert Peterson to answer by Det City [3-1] (RH) [entry date 9/9/02]

9 /6/02 -- 5 -- ANSWER by plaintiff Thomas-Robert Peterson to affirmative defenses by Det City [3-1] (RH) [entry date 9/9/02]

9/13/02 -- 6 -- Affidavit by plaintiff Thomas Robert Peterson regarding formal legal status and notice of rule 16 and 26(f) (1h) [entry date 9/17/02]

9/13/02 -- 7 -- Proof of service by plaintiff Thomas Robert Peterson of [5-1]. [5-1] (1h) [entry date 9/17/02]

9/16/02 -- 8 --MOTION by plaintiff Thomas Robert Peterson for summary judgement with affidavit and proof of service (no brief) (1h) [entry date 9/17/02]

9/20/02 -- 9 -- NOTICE of Rule 26(f) plan and status report (ew) [entry date 9/24/02]

9/27/02 -- 10 -- MOTION by plaintiff Thomas Robert Peterson for amendment of joinder rule 15(a) and 18(b) with affidavit proof of service (dh) [entry date 9/30/02]

9/27/02 -- 11 -- Proof of service by plaintiff Thomas Robert Peterson of rule 26 plan and status report (dh) [entry date 9/30/02]

10/7/02 - 12-- MOTION by Thomas Robert Peterson for the supplemental pleadings with affidavit and proof of service (kb) [entry date 10/9/02]

10/7/02 --13 -- RESPONSE by Det City to motion for summery judgement by Thomas Robert Peterson [8-1] with exhibits A-H and proof of service (kb) [entry date 10/9/02]

10/8/02 --14-- ORDER by Judge Robert H. Cleland denying motion for summary judgement by Thomas Robert Peterson [8-1] without prejudice, with proof of service [EOD date 10/10/02] (kb) [entry date 10/10/02]

10/16/02--15-- (STRICKEN) REPLY by plaintiff to response to motion for summary judgement by Thomas Robert Peterson [8-1] with exhibits (pp) [entry date 10/17/02] [Edit date 10/15/02]

10/21/02--16-- Proof of service by plaintiff Thomas Robert Peterson of [15-1] (dt) [entry date 10/21/02]

10/23/02--17-- NOTICE of setting deadline for response to motion for the supplemental pleadings [12-1] [10-1] for 11/18/02 (dt) [entry date 10/24/02]

10/24/02--18-- ORDER by Judge Robert H. Cleland striking response reply by Thomas Robert Peterson [15-1] [EOD date 10-25-02] with proof of service (DT) [entry date 10-25-02]

10/24/02--19--PRETRIAL scheduling order by Judge Robert H. Cleland setting deadline for amended pleadings for 11-1-02, setting deadline for witness list for 1-17-02, setting deadline for discovery for 1-31-03, setting deadline for filing dispositive motions for 3-3-03, setting deadline for filing dispositive motions for 3-3-03, setting deadline for pretrial order for 6-16-03, setting final pretrial conference for 6-23-03, setting civil jury trial for JULY/AUG 2003 (DT) [entry date 10-25-02]

10/24/02-20-- ORDER by Judge Robert H. Cleland setting conference and referring [20-1][20-2][20-3] to magistrate judge Virginia M. Morgan [EOD date 10-25-02](DT) [entry date 10-25-02]

10/28/02--21-- NOTICE by court setting mediation settlement conference for 10:00 12-10-02 (RH) [entry date 10-25-02]

11/1/02--22-- MOTION by the plaintiff Thomas Robert Peterson to amend pleadings to the complaint, with brief attachments and proof of service. (RH) [entry date 11-4-02]

11/5/05--23-- WITNESS LIST by plaintiff Thomas Robert Peterson (IH) [entry date 11-06002]

11/7/02--24-- WITNESS LIST by defendant Det City with proof of service (Ih) [entry date 11-8-02]

11/8/02--25-- RESPONSE by defendant Det City to motion to amend pleadings to the complaint by Thomas Robert Peterson [22-1], motion for the supplemental pleadings by Thomas Robert Peterson [12-1] with attachments (ew) [entry date 11-12-02]

11/14/02--26-- REPLY by plaintiff to response to amend pleadings to the complaint by Thomas Robert Peterson [22-1] motion for the supplemental pleadings by Thomas Robert Peterson [12-1] with attachments (ew) [entry date 11-15-02]

11/15/02--27-- Proof of service by plaintiff Thomas Robert Peterson of preliminary witness list (dh) {entry date 11-18-02]

12/10/02----- SETTLEMENT conference held Magistrate Virginia M. Morgan (jo) [entry date 12-10-02]

12/18/02--28-- ORDER by Judge Robert H. Cleland denying motion to amend pleadings to the complaint by Thomas Robert Peterson [22-1], denying motion for amendment of joinder rule 15(a) and 18(b) by Thomas Robert Peterson [10-1], for plaintiff Thomas Robert Peterson to show cause not to be dismissed for lack of subject matter jurisdiction writing within 30 days [EOD 12-19-02] (RH) [entry date 12-19-02]

1/2/03/--29-- RESPONSE by [plaintiff to order for plaintiff Thomas Robert Peterson to show cause why this case should not be dismissed for lack of subject matter jurisdiction [28-1] order [28-2] with attachments (ew) [entry date 1-3-03] [edit date 1-3-03]

1/13/03--30-- WITNESS list by Thomas Robert Peterson kb) {entry date 1-15-03]

1-13-03--31-- Motion by Thomas Robert Peterson for reconsideration of joinder on 42-USC-1983 and notice of special damages with exhibit A (kb) [entry date 1-15-03]

1-13-03--32-- Statement by Thomas Robert Peterson and claim of special damages [EOD date 1-15-03] (kb) [entry date 1-15-03]

1/13/03--33-- PROOF of service by Thomas Robert Peterson of [29-1] (kb) [entry date 1-15-03]

1/17-03--34-- PROOF of service by Thomas Robert Peterson of [32-1][31-1][30-1] (PP) [entry date 1-21-03]

1/23/03--35-- ORDER by Judge Robert H. Cleland denying motion for reconsideration by Thomas Robert Peterson [31-1][31-2] denying statement (construed by the court as a motion to amend) by Thomas Robert Peterson [32-1] and dismissing complaint [EOD date 1-27-03] with proof of service (DT) [entry date 1-27-03]

1/27/03--36-- JUDGEMENT entered by Judge Robert H. Cleland for defendant [EOD date 1-27-03](DT)[entry date 1-27-03]

1/27/03--37-- APPEAL by plaintiff Thomas Robert Peterson of orders [36-1] and [35-1] to USCA-FEE: PAID -Receipt # 481675 (do) {entry 1-28-03]
1/28/03--38-- PROOF of service of appeal notice [37-1]to USCA Thomas Peterson and James Noseda (do) [entry date 1-28-03]
1/28-03--39-- CERTIFIED copy of notice by Thomas Robert Peterson [37-1] and docket transmitted to USCA (do) [entry date 1-28-03]

Of the United States of America:
the Court of the District:
for the Eastern-District of the State: Michigan

Thomas-Robert: Peterson / (Civil No.:)
^ plaintiff (Judge :)
v.
Detroit : the City /
^ defendant(s) **(COMPLAINT)**

[a 5-pages with a 6-page-attachment] [8-12-02]

plaintiff
Thomas-Robert: Peterson [in-person]
[15926-Beaverland]
Detroit, Michigan [48223]
(313-531-3206)
[48226]

defendant-service
Ruth Carter
City-Attorney-Detroit
660-Woodward Ave.
Suite-1650
Detroit Michigan.

{ COMPLAINT }

Note: the plaintiff : in-person, is-not a trained or licensed : lawyer or attorney.

Now in the Court of the District, of the Eastern-District of the Michigan, of the United States of America ; as a proper party and as the Plaintiff : the Thomas-Robert: Peterson.

SECTION [A] : The parties :

As the Plaintiff: the Thomas-Robert: Peterson : is a human being and not a corporation, and not a attorney-or-lawyer, and the domicile of the said-Plaintiff is of a Location within the Detroit: a city of the Michigan: a State of the United States of America.

As the Defendant: the Detroit: is a city, of the State: Michigan and thereby of the United States of America.

SECTION [B] : The jurisdiction :
[a] "*28 USC* Sec. *1331* 01/02/01 "
"Sec. 1331. Federal question "
"The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States"
[b]As a tort-action.

SECTION [C] : The claim and the cause of the action :
[a] Claim: a unlawful-violation of the Privacy Act of 1974 by the city: Detroit: thereby: Damaged is the Plaintiff the Thomas-Robert: Peterson.
[b] For the reason of a refusal by the Plaintiff : the Thomas-Robert: Peterson of the disclosure of the Social-Security-Account-Number of the Plaintiff : the Thomas-Robert: Peterson , to the GENERAL-LICENSING-UNIT : of the City: Detroit : denied is the Plaintiff: the Thomas-Robert: Peterson of a right, benefit, or a privilege ; namely a license/permit for the operation of a taxi within the City: Detroit ; thereby an unlawful-violation; of the Section-7-(a)(1) of the P.L.-93-579 ; The Privacy Act of 1974; 5-USC-552a : thereby: damaged is the Plaintiff : the Thomas-Robert: Peterson by an unlawful act of the Defendant: the City: Detroit.

CITE : *Section-7 of The Privacy Act of 1974 ; Public-Law-93-579-Dec.-31-1974; 88-Stat.-1896; codified at the 5-USC-552a.*
"(a)(1) It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.

[PAGE-2 CONTINUED]

"(2) the (The) provisions of paragraph (1) of this subsection shall not apply with respect to
"(A) any disclosure which is required by Federal statute, or
"(B) the disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was
required under statute or regulation adopted prior to such date to verify the identity of an individual.
"(b) Any Federal, State, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it."

(PAGE-2 CONTINUED)

SECTION [D] The Events :

[a] On the date of August-1-2002 : at the DETROIT GENERAL LICENSE UNIT at the 2110 Park Ave. Detroit, Michigan : the Plaintiff : the Thomas-Robert: Peterson: attempted the acquiring of a license/permit for the operation of a Taxi-Cab within the city-limits of the City : Detroit, with the result , FOR THE REASON of the refusal of the disclosure of a Social-Security-Account-Number : DENIED OF THE SAID-LICENSE is the Plaintiff: the Thomas-Robert: Peterson. Notwithstanding the City-Detroit-paperwork, as a "request" for the procurement of the license includes an area marked for the disclosure of a Social-Security-number however the said-paperwork is without an Privacy-Act-Notice *.

* *A Privacy-Act-Notice : defined as to a Social Security Account Number in the Privacy Act of 1974- Section-7(b) supra : is the disclosure voluntary or mandatory? and of any authority for the disclosure-request?*

[b] [Same-Day-same-event] On the date : August-1-2002 , informed are the personal of the said LICENSE-UNIT, of a requirements of the Sec.-7-(b) of the Privacy Act of 1974 * including the REQUIREMENT for the CITE of the AUTHORITY for a request of a SOCIAL SECURITY ACCOUNT NUMBER by a LOCAL GOVERNMENT AGENCY .

NOTE: the said-personal are a Officer-C.-Williams and a Sargent Rodriguez.

*CITE: of Sec.-7 of The Privacy Act of 1974 supra.

[c] [Same-Day-same-event] On the date : August-1-2002: upon a attempt by the Plaintiff : the Thomas-Robert: Peterson ; of the reading the Sec.-7 of the Privacy Act of 1974 to the said-GENERAL-LICENSE-personal : ordered is the Plaintiff the Thomas-Robert: Peterson to leave the building [2110-Park] by the Officer-C.-Williams in the Presence of the Sargent-Rodriguez.

[d] In the same-day: 8-1-02 : in an attempt for the obtaining of the said-license: the Plaintiff : the Thomas-Robert: Peterson, called the office of the supervisor of the Sargent-Rodriguez and the office of the Chief of Police of the City: Detroit, and talking to a Officer-White, an Officer-Williams, a Sargent-Miller, and a Sargent-Myles, and after outlining to the said-personal the matter of the unlawful-requirement by the city: Detroit, for the disclosure of the Social-Security-Account-Number for the right, benefit, or privilege of a License/Permit for the operation of a taxi-cab by an individual within the city-limits of the City: Detroit , and including the citing of the Section-7 of the Privacy Act of 1974, to the named-personnel : the Plaintiff : the Thomas-Robert-Peterson for the reason: of the refusal of a disclosure of a Social-Security-Account-Number to the Defendant: Detroit: is again refused the said-license/permit by the Defendant: Detroit.

[e] Attached as the *EXHIBIT-A* is a <u>six page</u>: AFFIDAVIT-OF-TRUTH by the Plaintiff: the Thomas-Robert: Peterson: a true witness and with a first-hand-knowledge to the details of the events of the subject-matter of the action. NOTE: the said-attached-Affidavit by the competent-witness is signed under the penalties of perjury in the presence of a notary-public.

<u>SECTION [e] : The jury demand:</u>

the Plaintiff: the Thomas-Robert: Peterson : requests a jury-trial.

<u>SECTION [F] The request for relief.</u>

[a] <u>Request by the Plaintiff :</u> For a declaratory-judgement in the matter of the Defendant-Detroit : requesting without a Privacy-Act-Notice : a Social-Security-Account-Number.

NOTE: the term " Privacy-Act-Notice means a compliance with section-7(b) of the Privacy Act of 1974.

[b] Request by the Plaintiff:

For the money-damages in the amount of the lost wages based on an amount of ($35,000.00) thirty-five-thousand-dollars-per-year (50-weeks) : a ($700.00) seven-hundred-dollars-per-weekor an any-part of a week from the date of the August-1-2002 until the said-license is obtained by the Plaintiff: the Thomas-Robert: Peterson

[c]

Request by the Plaintiff:

For the PUNITIVE-DAMAGES: as a money-damages in the amount of a ($10.000.00) ten-thousand-dollars.

and/or

For a additional-retrospective-damages : a money-damages in the amount of a ($10,000.00) ten-thousand-dollars for the mental-suffering and for the reason of a set-back in the career of the Plaintiff: the Thomas-Robert: Peterson.

[d] Request by the Plaintiff: For the reasonable-costs of the litigation.

_____DATE_____

Thomas-Robert: Peterson
all-rights-reserved
Thomas-Robert: Peterson
[15926-Beaverland]
Detroit, Michigan [48223] 313-531-3206